

**Appeal No. 03-1575**

**Cir. Ct. No. 02CV002943**

**WISCONSIN COURT OF APPEALS  
DISTRICT IV**

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**STAN JOHNSON, MARGARET KADING, ELLEN  
LALUZERNE, ROGER PALEK, DENNIS WISER, AND  
WISCONSIN EDUCATION ASSOCIATION COUNCIL,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION,  
ELIZABETH BURMASTER, APPLETON AREA SCHOOL  
DISTRICT, BOARD OF EDUCATION OF THE APPLETON  
AREA SCHOOL DISTRICT, WISCONSIN CONNECTIONS  
ACADEMY, SHARON M. FENLON AND RICHARD W. PIKE,**

**DEFENDANTS-RESPONDENTS.**

**FILED**

**MAR 18, 2004**

Cornelia G. Clark  
Clerk of Supreme Court

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**CERTIFICATION BY WISCONSIN COURT OF APPEALS**

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Before Deininger, P.J., Lundsten and Higginbotham, JJ.

Pursuant to WIS. STAT. RULE 809.61 (2001-02),<sup>1</sup> this court certifies the appeal in this case to the Wisconsin Supreme Court for its review and determination.

This action for declaratory judgment was commenced by several state taxpayers and the Wisconsin Education Association Council. It concerns a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

charter school operated by defendant Wisconsin Connections Academy and chartered by defendant Appleton Area School District. According to the complaint:

The purpose of this action is to determine whether [defendant Department of Public Instruction] ... may make open enrollment payment adjustments to school districts' equalization aid for students enrolled in Wisconsin Connections Academy (WCA) and whether the District may operate a charter school which provides at-home, on-line educational services to students who are not residents of the District.

The complaint seeks declaratory and injunctive relief. On the parties' cross-motions for summary judgment, the circuit court granted judgment in favor of the defendants.

In this appeal, the parties appear to agree that WCA has an administrative office in Appleton, but no students receive instruction there, notwithstanding certain contrary findings by the circuit court. They dispute the extent to which instruction of the students is provided by the school's teachers, as opposed to parents or other adults. They appear to agree that, although some of WCA's students reside in the Appleton district, most of the school's pupils are nonresidents. For each of the nonresident students, the district received an open enrollment transfer payment of approximately \$5,195.

The named taxpayers and WEAC rely on two arguments. First, appellants argue that the chartering of WCA is improper because it is contrary to the statute prohibiting school boards from establishing a charter school "located outside the school district." *See* WIS. STAT. § 118.40(3)(c). The appellants argue that a school with more than ninety-five percent of its students receiving instruction outside the district cannot reasonably be described as a school located

within the district. Second, the appellants argue that WCA is not in compliance with the open enrollment statute, WIS. STAT. § 118.51, because that statute applies to students who are “attending” schools “in” a nonresident district. The appellants assert that the concept of “attending” a school involves some degree of physical presence at the school’s location, and therefore the nonresident students of WCA cannot be described as “attending” that school under the open enrollment law.

In addition to statutory analysis, the parties rely on policy arguments, including the structure of school funding in the open enrollment law. Regardless of the ultimate reasoning of the decision, this case will resolve issues with a statewide impact on education finance and policy. Accordingly, we believe these issues are more appropriately resolved by the supreme court.<sup>2</sup>

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<sup>2</sup> On appeal, the appellants begin with an argument about discovery. Whether it is necessary to resolve that issue may depend on the analysis followed in addressing the substantive statutory arguments. If it must be resolved, it appears that it can be decided by reliance on ordinary discovery law, and does not, by itself, present an issue worthy of certification. Therefore, we do not address it further here.

